

38846

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COALITION TO DEFEND AFFIRMATIVE ACTION, INTEGRATION AND IMMIGRANT RIGHTS AND FIGHT FOR EQUALITY BY ANY MEANS NECESSARY (BAMN), UNITED FOR EQUALITY AND AFFIRMATIVE ACTION LEGAL DEFENSE FUND, RAINBOW PUSH COALITION, CALVIN JEVON COCHRAN, LASHELLE BENJAMIN, BEAUTIE MITCHELL, DENESHEA RICHEY, STASIA BROWN, MICHAEL GIBSON, CHRISTOPHER SUTTON, LAQUAY JOHNSON, TURQOISE WISE-KING, BRANDON FLANNIGAN, JOSIE HYMAN, ISSAMAR CAMACHO, KAHLEIF HENRY, SHANAE TATUM, MARICRUZ LOPEZ, ALEJANDRA CRUZ, ADARENE HOAG, CANDICE YOUNG, TRISTAN TAYLOR, WILLIAMS FRAZIER, JERELL ERVES, MATTHEW GRIFFITH, LACRISSA BEVERLY, D'SHAWN FEATHERSTONE, DANIELLE NELSON, JULIUS CARTER, KEVIN SMITH, KYLE SMITH, PARIS BUTLER, TOUISSANT KING, AIANA SCOTT, ALLEN VONOU, RANDIAH GREEN, BRITTANY JONES, COURTNEY DRAKE, DANTE DIXON, JOSEPH HENRY REED, AFSCME LOCAL 207, AFSCME LOCAL 214, AFSCME LOCAL 312, AFSCME LOCAL 836, AFSCME LOCAL 1642, AFSCME LOCAL 2920, and the DEFEND AFFIRMATIVE ACTION PARTY

Case No.

Hon.

Plaintiffs,

-vs-

JENNIFER GRANHOLM, in her official capacity as Governor of the State of Michigan, and the REGENTS OF THE UNIVERSITY OF MICHIGAN, the BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY, the BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY, and the TRUSTEES OF any other public college or university, community college, or school district,

Defendants.

GEORGE B. WASHINGTON (P-26201)
SHANTA DRIVER (P-65007)
SCHEFF & WASHINGTON, P.C.
Attorney for Plaintiffs
645 Griswold—Ste 1817
Detroit, MI 48226
(313) 963-1921

Case: 2:06-cv-15024
Assigned To: Lawson, David M
Referral Judge: Whalen, R. Steven
Filed: 11-08-2006 At 04:18 PM
CMP COALITION TO DEFEND, ET AL V. G
RANHOLM, ET AL (TAM)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Pursuant to the Federal Rules of Civil Procedure, the plaintiffs, by and through their attorneys, Scheff & Washington, P.C., state as follows:

INTRODUCTION

1. The plaintiffs BAMN, et al. assert that Proposal 2, which was placed on the ballot of the State of Michigan by racially-targeted voter fraud, and which was adopted by Michigan voters on November 7, 2006, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and is preempted by Titles VI and VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972. As there is no state's rights exception for federal anti-discrimination laws, the plaintiffs ask for declaratory and injunctive relief against the implementation of Proposal 2. (42 USC 1983)

2. In the absence of affirmative action, state actors will be prohibited from utilizing the only effective policies ever devised to desegregate universities, employment, and public contracting. No state Constitution can prohibit its state bodies from fulfilling the federal mandate to desegregate.

3. In the absence of affirmative action, college admissions, state hiring and contracting will be conducted on a discriminatory basis. The irreparable harm to women and minorities in the absence of affirmative action has been clearly established in California.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 USC 1331 and 28 USC 1343(3).

5. The United States District Court for the Eastern District of Michigan is a proper venue for this action as a substantial part of the events or omissions giving rise to this action occurred in the Eastern District of Michigan.

PARTIES

6. The plaintiff BAMN is a voluntary association organized for the purpose of building a new civil rights movement and opposing attacks upon affirmative action.

7. The plaintiff United for Equality and Affirmative Action Legal Defense Fund is a non-profit legal defense and education fund established by BAMN to conduct the legal defense of our nation's civil rights.

8. The plaintiff Rainbow PUSH Coalition is a voluntary association organized for the purpose of promoting education and participation in American democracy and civil rights.

9. The plaintiffs Calvin Jevon Cochran, Lashelle Benjamin, Beautie Mitchell, Deneshea Richey, Stasia Brown, Michael Gibson, Christopher Sutton, Laquay Johnson, Turquoise Wise-King, Brandon Flannigan, Kahleif Henry, Shanae Tatum, Kevin Smith, Kyle Smith, Paris Butler, Touissant King, Aiana Scott, Allen Vonou, Randiah Green, Brittany Jones, Courtney Drake, Matthew Griffith, Lacrissa Beverly, D'shawn Featherstone, Danielle Nelson, Julius Carter, Williams Frazier, and Dante Dixon are black high school students in Michigan who plan to attend college, and to work and live in Michigan in the future.

10. The plaintiffs Josie Hyman, Alejandra Cruz, Adarne Hoag, Candice Young, Tristan Taylor, Jerell Erves, are black, Latino/a and white college students and graduates who plan to attend graduate school, and to work and live in Michigan in the future

11. The plaintiff Joseph Henry Reed was a petition circulator for the Michigan Civil Rights Initiative (now Proposal 2).

12. The plaintiffs AFSCME Local 207, AFSCME Local 214, AFSCME Local 312, AFSCME Local 836, AFSCME Local 1642, AFSCME Local 2920, are labor organizations with large memberships who stand to suffer discrimination in the absence of affirmative action.

13. The plaintiff Defend Affirmative Action Party is a voluntary student political organization on the University of Michigan student government.

14. The plaintiff Maricruz Lopez is a Latina student at the University of Michigan and the chair of the Defend Affirmative Action Party.

15. The plaintiff Issamar Camacho is a Latina high school student from Los Angeles California who intends to apply for college in Michigan.

16. The defendant Jennifer Granholm is the Governor of Michigan and is sued in her official capacity.

17. The defendant Regents of the University of Michigan is the duly elected governing board of the University of Michigan.

18. The defendant Board of Trustees of Michigan State University is the duly elected governing board of Michigan State University.

19. The defendant Board of Governors of Wayne State University, is the duly elected governing board of Wayne State University.

STATEMENT OF FACTS

20. In 1866, Congress passed the Civil Rights Act of 1866, which banned all racial discrimination in the form of contract entered into by persons or institutions in the United States.

21. 1964, the Congress of the United States passed the Civil Rights Act of 1964, mandating that all employers and educational institutions in the United States eliminate all policies that had the intent or the effect of discriminating against persons on account of their race, color, national origin or gender.

22. In 1972, Congress amended the Civil Rights Act to make it applicable to all state and local governments.

23. In 1972, Congress also passed the Educational Amendments of 1972, mandating the end of any discrimination on account of gender in education.

24. Commencing in 1964 and continuing thereafter, the President of the United States, the Equal Employment Opportunity Commission, the Civil Rights Commission and numerous other public officials recognized that it was not possible to assure equality and desegregation in education, employment and many other areas without the use of race and gender conscious measures that came to be known as affirmative action.

25. In repeated decisions, the United States Supreme Court recognized that the Civil Rights Acts conferred on universities, governments and employers the right to take voluntary affirmative action measures to assure equality on account of race and gender, most recently in the United States Supreme Court June 2003 decision in *Grutter v Bollinger*, approving the affirmative action plan at the University of Michigan Law School.

26. Proposal 2, which is a direct copy of California's Proposition 209, purports to eliminate what it calls race and gender preferences and what everyone else calls "affirmative action."

27. As established by a decade of experience in California, the elimination of affirmative action plans means a drastic decline in the enrollment of black, Latino/a and Native American students at the flagship state universities and of women in many university programs. The elimination of affirmative action plans has precipitated a decline in the employment of black, Latino/a, and Native American people at all levels of government employment and contracting.

28. As established by a decade of experience in California, the adoption of Proposal 2 will make it impossible to implement the mandates of the Civil Rights Acts set forth above.

COUNT ONE

VIOLATION OF THE CIVIL RIGHTS ACTS

29. The allegations of paragraphs one through 17 are repeated as if fully set forth herein.

30. In depriving state educational and government institutions of the ability to assure equal educational and employment opportunity, Proposal 2 destroys the ability of the state institutions and governments to fulfill the purposes of the federal Civil Rights Acts set forth above.

31. Proposal 2 is preempted by the Civil Rights Act of 1866, by Titles VI and VII of the Civil Rights Act of 1964, and by Title IX of the Educational Amendments of 1972.

WHEREFORE, the plaintiffs ask that this Court enter declaratory and injunctive relief declaring Proposal 2 preempted by the federal civil rights acts, enjoining the defendants from eliminating any affirmative action plans on account of Proposal 2, and granting such further relief as is just and equitable.

COUNT TWO

VIOLATION OF THE EQUAL PROTECTION CLAUSE

32. The allegations of paragraphs one through 31 are repeated as if fully set forth herein.

33. Proposal 2 unlawfully singles out race and gender alone as areas where the duly-elected public officials may not take steps to eliminate discrimination and assure equality.

34. Furthermore, Proposal 2 unlawfully burdens women and minorities with amending the state constitution before they alone can petition duly-elected officials for redress of grievances, including a redress of grievances regarding the racial and sexual integration of public education and employment.

35. In singling out race and gender for discriminatory treatment, Proposal 2 violates the Equal Protection Clause of the Fourteenth Amendment.

COUNT THREE

VIOLATION OF THE FIRST AMENDMENT

36. The allegations of paragraphs one through 35 are repeated as if fully set forth herein. Under Grutter and its predecessors, public universities have a First Amendment right to determine their academic standards and to determine the criteria for admission to the university.

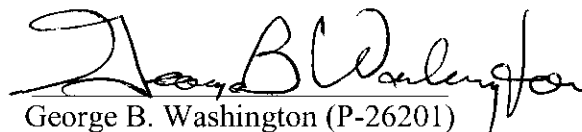
37. In enacting an amendment that prevents the universities from exercising that First Amendment rights, Proposal 2 violates the rights of the plaintiffs as guaranteed by 42 USC 1983.

WHEREFORE, the plaintiffs ask for declaratory relief that Proposal 2 violates the First Amendment and injunctive relief restraining the defendant universities from changing their admission or other policies in an attempt to comply with Proposal 2.

WHEREFORE, the plaintiffs ask that this Court enter relief declaring that Proposal 2 violates the Equal Protection Clause of the Fourteenth Amendment, enjoining the defendants from eliminating any affirmative action plans on account of Proposal 2, and granting such further relief as is just and equitable.

By Plaintiffs' Attorneys,
SCHEFF & WASHINGTON, P.C.

BY:



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Shanta Driver (P-65007)
645 Griswold—Ste 1817
Detroit, Michigan 48226
(313) 963-1921
(313) 407-4865

November 8, 2006

Wayne

COUNTY IN WHICH ACTION AROSE:

JS 44C
(Rev. 12/84)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

COALITION TO DEFEND AFFIRMATIVE ACTION,
INTEGRATION AND IMMIGRANT RIGHTS AND FIGHT
FOR EQUALITY BY ANY MEANS NECESSARY (BAMN)

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Wayne

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

George B. Washington, Shanta Driver
Scheff & Washington, P.C.
645 Griswold - Suite 1817,
Detroit, Michigan 48226 313-963-1921

DEFENDANTS

JENNIFER GRANHOLM, REGENTS OF THE
UNIVERSITY OF MICHIGAN, BOARD OF TRUSTEES
OF MSU, BOARD OF GOVERNORS OF WAYNE

LOCATION OF RESIDENCE OF FIRST LISTED DEFENDANT Wayne

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

☐ 1 U.S. Government
Plaintiff

☒ 3 Federal Question
(U.S. Government Not a Party)

☐ 2 U.S. Government
Defendant

☐ 4 Diversity
(Indicate Citizenship of
Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Case: 2:06-cv-15024
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RANHOLM, ET AL (TAM)

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF DESCRIPTION
UNLESS DIVERSITY)

This is an action under 42 USC 1983 for violation of Civil Rights Act of 1866, 1964 and 1972.

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury- Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 535 Habeas/Death	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R R & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 625 Drug Related Seizure/Prp LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395h) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 863 DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/ etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and corrupt Organiz- ations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence 28 USC 2255 <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

☒ 1 Original
Proceeding

☐ 2 Removed from
State Court

☐ 3 Remanded from
Appellate Court

☐ 4 Reinstated or
Reopened

☐ 5 Transferred from
another district
(Specify)

☐ 6 Multidistrict
Litigation

☐ 7 Appeal to District
Judge from
Magistrate
Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$
Injunctive relief

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S)

IF ANY Operation King's Dream v Connerly

JUDGE Tarnow

DOCKET NUMBER 06-12713

DATE
November 8, 2006

SIGNATURE OF ATTORNEY OF RECORD
George B. Washington

UNITED STATES DISTRICT COURT

PURSUANT TO LOCAL COURT RULE 8 (b) (3) (i)

(a) IS THIS A CASE THAT HAS BEEN PREVIOUSLY DISCONTINUED OR
DISMISSED WITHOUT PREJUDICE OR REMANDED TO A STATE COURT?

___ YES ___ **X** No,

(b) IF YES GIVE THE FOLLOWING INFORMATION:

CASE NO: _____

COURT _____

ASSIGNED JUDGE _____

PURSUANT TO LOCAL COURT RULE 8 (b) (3) (ii)

(a) OTHER THAN STATED ABOVE, ARE THERE ANY PENDING OR PREVIOUSLY DIS-
CONTINUED OR DISMISSED COMPANION CASES (cases in which it appears sub-
stantially similar evidence will be offered at trial or the same or related parties are
present and the cases arise out of the same transaction or occurrence) IN THIS OR ANY
OTHER COURT, INCLUDING STATE COURT?

X YES ___ NO

(b) IF YES GIVE THE FOLLOWING INFORMATION:

CASE NO: 06-1277-3

COURT: US District Eastern

ASSIGNED JUDGE: Tarrow

District